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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CITY OF RENO, NEVADA, individually and
on behalf of all others similarly situated,

Case No. 3:20-cv-00499-MMD-WGC

Plaintiff,

Judge: Hon. Miranda M. Du

VS.

Magistrate: Hon. William G. Cobb

NETFLIX, INC., and HULU, LLC,

STIPULATED DISCOVERY PROTOCOL AND ORDER

WHEREAS, the parties have cooperatively reached agreement on how to conduct discovery, including discovery of electronically stored information (“ESI”).

IT IS HEREBY STIPULATED AND AGREED that:

1. Scope of Order. This Stipulated Discovery Protocol and Order (hereinafter “Discovery Protocol”) applies to and governs discovery in the above-captioned action (the “Action”) and documents and ESI produced by or obtained from any party or non-party in the course of the Action.

2. **Discovery conference.** The parties discussed the parameters of their anticipated discovery at the Fed. R. Civ. P. 26(f) conference, as well as in their Stipulated Discovery Plan and Scheduling Order (Dkt. 41).

3. **E-discovery coordinator.** In order to promote communication and cooperation between the parties, each party to a case shall designate an individual or individuals through which all e-discovery requests and responses are coordinated (“the e-discovery coordinator”). Regardless

1 of whether the e-discovery coordinator(s) is an attorney (in-house or outside counsel), a third-party
2 consultant, or an employee of the party, he or she must be:

- 3 a. Familiar with the party's electronic systems and capabilities in order to
4 explain these systems and answer relevant questions;
- 5 b. Knowledgeable about the technical aspects of e-discovery, including
6 electronic document storage, organization, and format issues; and
- 7 c. Prepared to participate in e-discovery dispute resolutions.

8 The Court notes that, at all times, the attorneys of record shall be responsible for responding
9 to e-discovery requests. However, the e-discovery coordinators shall be responsible for organizing
10 each party's e-discovery efforts to ensure consistency and thoroughness and, generally, to facilitate
11 the e-discovery process. The ultimate responsibility for complying with e-discovery requests rests
12 on the parties. Fed. R. Civ. P. 37(f).

13 4. **Timing of discovery.** Discovery of relevant documents and ESI shall proceed in a
14 sequenced fashion.

- 15 a. After receiving requests for document production, the parties shall search
16 their documents, other than those identified as limited accessibility ESI
17 (including, but not limited to, documents created or used by electronic media
18 no longer in use and not reasonably readily accessible, maintained in
19 electronic storage media and not reasonably readily accessible, or for which
20 retrieval involves substantial cost), and produce non-privileged, relevant and
21 responsive ESI in accordance with Fed. R. Civ. P. 26(b)(1) & (b)(2).
- 22 b. Electronic searches of documents or ESI identified as of limited accessibility
23 shall not be conducted until the initial electronic document search has been
24 completed. Requests for information expected to be found in limited
25 accessibility documents must be narrowly focused with some basis in fact
26 supporting the request.

c. On-site or forensic inspections of electronic storage media under Fed. R. Civ. P. 34(a)(2) and 34(b) shall not be permitted absent exceptional circumstances, where good cause and specific need have been demonstrated.

4 5. **Search methodology.** If the parties intend to employ an electronic search to locate
5 relevant electronically stored information, the parties shall disclose, as requested, any restrictions
6 as to scope and method which might affect their ability to conduct a complete electronic search of
7 the electronically stored information as required by Fed. R. Civ. P. 26. The parties shall reach
8 agreement, as requested, as to the method of searching, and the words, terms, and phrases to be
9 searched with the assistance of the respective e-discovery coordinators, who are charged with
10 familiarity with the parties' respective systems. The parties also shall reach agreement, as
11 requested, as to the timing and conditions of any additional searches which may become necessary
12 in the normal course of discovery. To minimize the expense, the parties may consider limiting the
13 scope of the electronic search (e.g., time frames, fields, document types, custodians).

14 Consistent with the foregoing regarding electronic search, if the parties intend to employ
15 technology assisted review (“TAR”) to locate relevant ESI, the parties shall disclose, as requested,
16 any restrictions as to scope and method which might affect their ability to conduct a complete and
17 reliable TAR search of the ESI as required by Fed. R. Civ. P. 26. The parties shall reach agreement,
18 as requested, as to the TAR protocol, including protocols for quality control testing, reporting and
19 remediation, with the assistance of the respective e-discovery coordinators.

20 To the extent relevant documents or ESI are preserved on and readily-accessible from a
21 centralized server, network, database or host within the producing party's possession, custody, or
22 control, and responsive, non-privileged documents have been produced therefrom, the producing
23 party shall not be required to search for or produce exact duplicate copies of such relevant
24 documents or ESI that may be located on individual custodian's personal computer or mobile
25 device, or that are otherwise in possession of an individual custodian, absent a showing of good
26 cause that the search for and production of such exact duplicate copies are necessary.

1 6. **Format.** Unless otherwise agreed in advance by the parties, ordered by the Court,
2 or as necessary to protect privileged and other information outside the scope of discovery under
3 Fed. R. Civ. P. 26(b)(1), parties shall produce all documents or ESI in the following forms:

4 a. electronic spreadsheets, PowerPoint files, photographs, videos, audio,
5 animations, and similar electronic file-types not amenable to imaging shall
6 be produced in **native** file form with all metadata preserved;

7 b. The parties will meet and confer as necessary regarding the format of
8 production of ESI from a database to ensure it is produced in any reasonably-
9 usable form without undue burden or expense;

10 c. all other documents and ESI shall be produced in single-page **TIFF** (Group
11 IV, 300+ DPI) imaged file form. Documents containing color may be, but
12 do not need to be, produced in a single-page color JPEG format initially. If
13 an original document contains color necessary to understand the meaning or
14 content of the document, the producing party shall honor reasonable requests
15 for a color image and/or native file of the document. Color images should
16 be produced in single-page JPEG format.

17 The producing party must Bates-label all documents and ESI it produces with a Bates-prefix
18 unique to that party and Bates-number unique to each native file or imaged page produced. The
19 producing party shall not use the exact name of a party to this litigation in the Bates prefix. The
20 filename for each native file or imaged page in the production shall reflect the assigned Bates-
21 number for that native file or imaged page. The assigned Bates-label also shall be internally
22 branded in the right footer of each imaged page in a location that does not obscure the document's
23 original content. Original document orientation shall be maintained (*i.e.*, portrait to portrait and
24 landscape to landscape). Images shall reflect all data, including track changes, comments, and
25 speaker notes, that would otherwise be visible to the reader using the native software that created
26 the document.

27 All productions shall include a corresponding metadata load file (to preserve certain
28 metadata extracted during processing and production), image cross-reference load file (to preserve

1 logical unitization), and extracted text files (to permit searching). Metadata load files shall be
2 produced in Relativity-compatible DAT file format or other reasonably-usable delimited file format
3 containing the following fields and metadata (or their nearest functional equivalents) to the extent
4 available: Begin_Bates, End_Bates, Begin_Attach_Bates, End_Attach_Bates, Custodian,
5 All_Custodians, DateTime_Sent, DateTime_Received, Email_From, Email_To, Email_CC,
6 Email_BCC, Email_Subject, Title, Author, DateTime_Created, DateTime_Modified, File_Name,
7 File_Extension, Folder_Path, File_Size, MD5_Hash, Time_Zone_Field, Native_File_Path,
8 Extracted_Text_Path, Redacted, Confidential_Designation. Image cross-reference load files shall
9 be produced in Opticon (OPT) file format, with the original start and end pages of each document
10 identified. Extracted text files shall be produced in TXT form.

11 Parent-child relationships of documents (*e.g.*, a parent email and its attachments) shall be
12 preserved in the production, such that a parent document appears in a production with and
13 immediately followed by its children attachments. Any privileged document that might otherwise
14 appear in a production solely by virtue of its attachment to a responsive non-privileged document
15 may, at the producing party's option, be replaced with an imaged placeholder slipsheet stating the
16 reason it was not produced (*e.g.*, "Placeholder: Privileged Document Withheld").

17 In the interest of efficiency and timeliness, parties may choose to produce only responsive,
18 "inclusive" emails from their email collection. "Inclusive" includes both of the following types of
19 emails: (a) any responsive, last-in-time, email which contains within it the text of all preceding
20 emails from the thread to which it belongs; and (b) any email to which a unique document is
21 attached, though the text in the body of such an email may itself be duplicative of the text in other
22 produced email files.

23 Parties may redact the following from production: protected personally-identifiable
24 information (*e.g.*, social security numbers and birth dates); information subject to attorney-client
25 privilege, work product doctrine, or other privilege recognized by statute or common-law; and any
26 information excluded from discovery by Court order, Civil Rules, Local Rules, or party agreement.
27 If ESI that would otherwise be produced in native form under this Discovery Protocol (*e.g.*
28 electronic spreadsheets) requires redaction, the producing party may instead produce the ESI in

1 redacted image or near-native form so long as the redacted image or near-native form is reasonably
2 usable. All redactions must be applied in a manner that they are readily-identifiable in the
3 production as redactions. The producing party shall obtain non-redacted OCR text from the
4 redacted image, or otherwise obtain non-redacted extracted text, and provide a link to that material
5 in the Extracted_Text_Path.

6 To the extent a party seeks to have any ESI produced in a form or with metadata other than
7 as provided in this Discovery Protocol, that party must demonstrate good cause and particularized
8 need for such production. If any ESI cannot be produced in the forms described above or if such
9 production form would impose undue burden or expense, then the parties shall confer and attempt
10 to agree on another reasonably usable form or forms in which to produce that ESI.

11 7. **Retention.** The parties shall take reasonable and proportionate steps to preserve
12 relevant ESI from permanent deletion or alteration. Notwithstanding any other provisions of this
13 Discovery Protocol, the parties need not preserve, search for, or produce the following categories
14 of ESI: (a) any ESI created and last modified before September 24, 2007; (b) backup or legacy ESI
15 that is substantially duplicative or cumulative of ESI that can be obtained from another source that
16 is more convenient, less burdensome, or less expensive, and from which responsive, non-privileged
17 information has already been produced; (c) “slack,” “fragmented,” or “unallocated” data on
18 physical storage media, such as hard drives; (d) random access memory, temporary files, or other
19 ephemeral ESI that is not preserved in the ordinary course of business and is difficult to preserve
20 without disabling the operating system or electronic device; (e) internet browsing history, caches,
21 or cookies; (f) phone logs; (g) server, system, or network logs that are not preserved in the ordinary
22 course of business; (h) data remaining from systems no longer in use that is unintelligible on
23 systems in use; (i) mobile or cellular phone or tablet devices or data from such devices; and (j)
24 voicemails, instant messages and similar short messaging data that are not preserved in the ordinary
25 course of business.

26 8. **Privilege.** The production of privileged or work-product protected documents, ESI
27 or other information (hereinafter, “Privileged Material”), whether inadvertent or otherwise, and
28 regardless of the care actually taken to prevent or rectify the disclosure, is not a waiver of the

1 privilege or protection from discovery in this case or in any other federal or state proceeding. This
2 Discovery Protocol shall be interpreted to provide the maximum protection allowed by Fed. R.
3 Evid. 502(d)-(f), shall supersede the tripartite non-waiver elements of Fed. R. Evid. 502(b), and
4 shall be enforceable and granted full faith and credit in all other state and federal proceedings by
5 28 U.S. Code § 1738. In the event of any subsequent conflict of law, the law that is most protective
6 of privilege and work product shall apply. Any party or non-party that receives a document or ESI
7 in this Action that, upon review by the receiving party, appears on its face to contain inadvertently
8 disclosed Privileged Material shall immediately notify the party to whom the Privileged Material
9 belongs and sequester, return, or destroy the document or ESI until the privilege or work product
10 claim(s) can be resolved. In all other circumstances, Fed. R. Civ. P. 26(b)(5)(B) shall apply.
11 However, if for any reason, a Court finds that this Section 8 is inapplicable to Privileged Material,
12 then Fed. R. Evid. 502(b) will apply in its absence.

13 Consistent with the Federal Rules of Civil Procedure, the parties agree to serve a privilege
14 log providing information regarding all documents withheld or redacted under a claim of privilege
15 and/or work product. The parties will meet and confer regarding the contents and format of the
16 privilege log, and to negotiate a reasonable time within which to exchange privilege logs. To reduce
17 the burdens of logging any information withheld from discovery on privilege or trial preparation
18 grounds as required by Fed. R. Civ. P. 26(b)(5)(A), parties shall not be required to log: **(a)**
19 privileged attorney-client communications between the client and its in-house or litigation counsel
20 on or after September 2, 2020; **(b)** privileged attorney-client communications between the client
21 and its in-house or litigation counsel on or after the filing of and related to the following cases: *City*
22 *of Creve Coeur, Missouri v. Netflix, Inc., and Hulu, LLC*, St. Louis County Circuit Court case
23 number 18SL-CC02819, *City of Creve Coeur, Missouri v. DIRECTV, LLC, et al.*, St. Louis County
24 Circuit Court case number 18SL-CC02821-01, *City of Creve Coeur, Missouri v. Netflix, Inc., and*
25 *Hulu, LLC*, United States District Court, Eastern District of Missouri case number 4:18-cv- 01495,
26 *City of Creve Coeur, Missouri v. DIRECTV, LLC, et al.*, United States District Court, Eastern
27 District of Missouri case number 4:18-cv-01453, *City of Fishers, Indiana, City of Indianapolis,*
28 *Indiana, City of Evansville, Indiana, and City of Valparaiso, Indiana v. Netflix, Inc., Disney DTC*

1 *LLC, Hulu LLC, DIRECTV, LLC, DISH Network Corp. and DISH Network L.L.C.*, Indiana
2 Commercial Court Case No. 49D01-2008-PL-026436, *City of New Boston, Texas v. Netflix, Inc.,*
3 and *Hulu, LLC*, United States District Court, Eastern District of Texas, case number 5:20-cv-00135,
4 and *City of Maple Heights, Ohio v. Netflix, Inc., and Hulu, LLC*, United States District Court,
5 Northern District of Ohio, case number 1:20-cv-01872; **(c)** communications exchanged with an
6 expert who has been retained or specifically employed by the party or its counsel in anticipation of
7 litigation or to prepare for trial; or **(d)** documents and tangible things prepared by or for a party's
8 attorneys, consultants, sureties, indemnitors, insurers, or agents that qualify as trial preparation
9 materials protected from discovery pursuant to Fed. R. Civ. P. 26(b)(3) or 26(b)(4). In all other
10 circumstances, Fed. R. Civ. P. 26(b)(5)(A) shall apply.

11 Nothing in this Discovery Protocol shall limit the receiving party's right to challenge (on
12 grounds unrelated to the fact or circumstances of the disclosure) the disclosing party's claim that
13 disclosed information is protected from disclosure by the attorney-client privilege or work product
14 doctrine. Any protected information submitted to the Court, pursuant to Local Rule 26-6 or
15 otherwise, in connection with a challenge to the disclosing party's claim of privilege or work
16 product protection shall not be filed in the public record but rather shall be redacted, filed under
17 seal, or submitted for *in camera* review in accordance with the Court's procedures.

18 **9. Confidentiality.** The parties have met and conferred and come to an agreement
19 regarding a protocol that governs the treatment of confidential information exchanged between or
20 among the parties in discovery prior to being filed with or otherwise submitted to the court.

21 **10. Non-Party Subpoena.** A party that issues a non-party subpoena is responsible for
22 producing any documents obtained under a subpoena to all other parties.

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11. **Costs.** Generally, the costs of discovery shall be borne by each party. However, the court may apportion the costs of electronic discovery upon a showing of good cause.

Respectfully submitted this 6th day of July, 2021.

PARSONS BEHLE & LATIMER

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12 **Pro hac vice* applications to be filed
13 *Counsel for Plaintiff City of Reno*

14
15 IT IS SO ORDERED.

16 DATED: July 7, 2021

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UNITED STATES MAGISTRATE JUDGE